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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,490	10/16/2003	Wendy Poss		2148

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EXAMINER
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NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/688,490

Applicant(s)

POSS ET AL.

Examiner

Son T. Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

*Ant*  
*Pin Exm 3643*

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Information Disclosure Statement*

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### *Claim Objections*

2. Claims 3,8 are objected to because of the following informalities: In claim 3, the claim depends upon itself. In claim 8, a period should be used at the end of the claim and not a semicolon. Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1,9,11-15** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6079067 (herein 067) in view of US 4631766 (herein 766).

For claim 1, 067 discloses a bed (applicable figures are 2,8-10) that can be used for a pet, the bed comprising a flat center section (where ref. 18 is pointing at) having open front area, top and bottom; a pair of formed side arms (where ref. 16 is pointing

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at), each having a front portion having a compound angle wherein the front portion extends rearward from the open front area at a first angle  $\alpha$  (same as applicants' fig. 2, fig. 2 of 067 shows angle  $\alpha$  if one was to draw a horizontal line in the front area where ref. 18 is pointing at), and simultaneously rising upward from the open front area at a second angle  $\beta$  (same as applicants' figs. 6 & 7, figs. 2 & 10 of 067 shows the angle  $\beta$  inclining from the front area to the back portion); and a raised back portion (where refs. 44 & 46 are pointing at). However, 067 lacks each of the side arms having a curved recessed portion formed between the front portion of the side arm and the raised back portion of the bed.

766 teaches a bed having side arms (where refs. 44,10,20,48,16 are pointing at) with curved recessed portion 48 to support arms of a user of the bed (col. 4, lines 35-39). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ recessed portion as taught by 766 in the side arms of the bed of 067 in order to provide support for the arms or body parts of the user.

For claims 9 & 15, 067 as modified by 766 (emphasis on 067) discloses the bed being made out of a foam (col. 3, lines 38-40). However, 067 as modified by 766 (emphasis on 067) lacks a closed cell foam or visco-elastic foam. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the bed of 067 as modified by 766 out of a closed cell foam or visco-elastic foam instead of just a foam, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claims 11-14, 067 as modified by 766 lacks teaching of specific degrees for angle  $\alpha$  &  $\beta$ . It would have been obvious to one having ordinary skill in the art at the time the invention was made to have various degrees for angle  $\alpha$  &  $\beta$  of 067 as modified by 766, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art.

5. **Claims 2 & 3** are rejected under 35 U.S.C. 103(a) as being unpatentable over 067 as modified by 766 as applied to claim 1 above, and further in view of US 6026527 (herein 527). 067 as modified by 766 lacks honeycomb support system having hexagonal, pentagonal and parallelogram sections. 527 teaches a cushion system which employs a honeycomb support system having various shaped sections to equalize pressure across the contact area of the object (in this case, bed) being cushioned (see abstract, last sentence). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ honeycomb support system with various shaped sections as taught by 527 in the bed of 067 as modified by 766 in order to equalize pressure across the contact area of the object.

6. **Claims 4-6,10** are rejected under 35 U.S.C. 103(a) as being unpatentable over 067 as modified by 766 as applied to claim 1 above, and further in view of US 5136981 (herein 981). 067 as modified by 766 lacks a sculpted area in the flat center section, wherein the area has a formed shape such as dog bone shape. 981 teaches a bed in which 981 discloses that any form of ornamental indicia can be included on the bed for appealing appearance (col. 4, lines 45-49). It would have been obvious to one having

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ordinary skill in the art at the time the invention was made to employ ornamental indicia as taught by 981 in the area of the flat center portion of the bed of 067 as modified by 766 in order to provide an appealing appearance. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ dog bone shaped as the preferred appealing appearance on the bed of 067 as modified by 766 and 981, depending on the user's preference to pick the dog bone shape or other shapes.

For claim 10, 067 as modified by 766 lacks the bed being formed in a mold. In addition to the above, 981 teaches the bed being formed in a mold (col. 6, lines 61-64). It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the bed of 067 as modified by 766 in a mold as taught by 981 for such molding method is notoriously well known in the art.

7. **Claims 7 & 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over 067 as modified by 766 and 981 as applied to claims 1,4 above, and further in view of US 6256822 (herein 822). 067 as modified by 766 and 981 lacks perimeter groove, the center portion being within the perimeter groove, and a plurality of grooves formed in the center portion of the sculpted area. 822 teaches a support system used in beds, the system having grooves 30,39,40 throughout the whole system, i.e. at the perimeter, at the center portion, to improve pressure dispersion (see abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ grooves as taught by 822 at various preferred areas of the bed of 067 as modified by 766 and 981 in order to improve pressure dispersion.

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8. **Claims 16-19** are rejected under 35 U.S.C. 103(a) as being unpatentable over 067 as modified by 766 as applied to claim 1 above, and further in view of US 6196156 (herein 156). 067 as modified by 766 lacks the bed being coated with a vinyl coating or a soft plastic coating by spraying the coating onto the bed. 156 teaches bedding articles in which 156 sprays vinyl and/or a soft plastic coating onto the bedding articles (col. 12, all lines, col. 13, line 49, col. 16, lines 40-50, col. 17, lines 24-64, col. 26, all lines, col. 27, all lines, col. 28, all lines). It would have been obvious to one having ordinary skill in the art at the time the invention was made to spray the bed of 067 as modified by 766 with either a vinyl coating or a soft plastic coating as taught by 156 in order to protect the bed from microbes, odor, etc.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.



Son T. Nguyen  
Primary Examiner, GAU 3643  
March 16, 2004